

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6745 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAJENDRA MRUGESHBHAI @ R.K. MUDALIYAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/12/1999

ORAL JUDGEMENT

#. The petitioner came to be detained by an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, on 3rd February, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short).

#. The detaining authority, in the grounds of detention, considered the three prohibition cases

registered against the petitioner so also the two statements of witnesses for unregistered offences. The detaining authority came to conclusion that the detenu is a bootlegger. He is involved in activities which are detrimental to public order. The witnesses who gave the statements had expressed fear to person and property from the detenu, which was subjectively found to be correct and genuine by the detaining authority and, therefore, the detaining authority came to conclusion that detention under PASA Act was the only remedy for immediately preventing the detenu from pursuing his illegal and anti-social activities and resorting to less drastic remedy is not possible.

#. The detenu has challenged the order of detention on various grounds. One of the grounds is that, though the detenu had asked for copy of the report of the Chemical Analyser in respect of three offences registered against him, the detaining authority has not supplied the same and the detenu is, therefore, deprived of his right of making an effective representation. The order of detention is, therefore, vitiated and the same may, therefore, be quashed and the detenu may be ordered to be released forthwith from detention.

#. Ms. Kachhavah, learned advocate appearing for the petitioner reiterated the above ground and submitted that the detaining authority, in reply to the representation, stated that the documents relied upon by the detaining authority were supplied to the detenu and did not supply the documents requested to by the detenu, namely, the report of the Chemical Analyser in respect of three prohibition cases. She, therefore, submitted that this is clear non-application of mind on part of the detaining authority and, therefore, the order is bad in law. She relied on the decision of a Division Bench of this Court in the case of Amrutbhai Ramabhai Vaghri v. Commissioner of Police, Ahmedabad City & Ors., 1994 (2) GLH (UJ) 5 and an unreported decision of a Division Bench of this Court in Special Criminal Application No.1633 of 1993 (Coram: S. Chatterjee and A.N. Divecha, JJ.), decided on 26th July, 1994 and submitted that the report of the Chemical Analyser, which is not supplied to the detenu, was essential for making an effective representation. She, therefore, submitted that the order may be quashed and the petition may be allowed.

#. Mr. H.H. Patel, learned Assistant Government Pleader appearing for the respondents, has opposed this petition. According to him, all the relevant documents were supplied and, therefore, the detaining authority by

letter dated 22nd June, 1999, in reply to the representation made by the advocate for the detenu, has stated that all relevant documents which were considered by the detaining authority have been supplied at the time of detention. The petition is, therefore, not maintainable and the same may be dismissed.

#. It is revealed from the grounds of detention that the detaining authority has taken into consideration the three offences registered under Bombay Prohibition Act against the detenu. When the order of detention was passed, the investigation was pending. The detaining authority was, therefore, expected to satisfy itself that the cases booked against the detenu were at least prima facie relating to liquor, i.e. the contraband seized from the detenu was prima facie found to be liquor. Now, if according to the detaining authority it has supplied the documents that were relied upon by the detaining authority while passing the order and if the report of the Chemical Analyser does not form part of the documents relied upon by the detaining authority, the Court is at loss to understand how the authority could have arrived at a subjective satisfaction of prima facie involvement of the detenu in the three prohibition cases. It is very essential that this aspect is considered by the detaining authority before passing the order of detention, more so when the detaining authority has taken into consideration these three offences against the detenu in the grounds of detention. This, therefore, reflects non-application of mind on part of the detaining authority.

#. The facts of the case go one step further. The detaining authority refused to supply copy of the documents after the detention even when the detenu requested for the copies thereto. The detenu is, therefore, deprived of a right of making an effective representation granted by the Constitution.

#. The impugned order of detention, therefore, suffers from two major defects, namely, (1) that there is non-application of mind by the detaining authority and (2) that the detenu is deprived of a right of making an effective representation by non-supply of documents demanded from the detaining authority by the detenu. The order of detention, therefore, deserves to be set aside.

#. The decisions relied upon by Ms. Kachhavah also are clearly applicable to the facts of the present case. In Special Criminal Application No.1633 of 1993, the report of the Chemical Analyser was not supplied. In that case also, the cases registered against the detenu

were pending investigation and, therefore, the Court came to conclusion that non-supply of such documents would vitiate the continued detention. Same was the case in Amrutbhai Ramabhai Vaghri (supra) and the Court quashed and set aside the order of detention.

##. In view of the above discussion, the petition deserves to be allowed and is allowed. The order of detention dated 3rd February, 1999, in respect of the petitioner-Rajendra Mrugeshbhai @ R.K. Mudaliyar is hereby set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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